

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1946-1991)
RANDOLPH E. PAUL (1946-1956)
SIMON H. RIFKIND (1950-1995)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

UNIT 5201, FORTUNE FINANCIAL CENTER
5 DONGSANHUAN ZHONGLU
CHAOYANG DISTRICT, BEIJING 100020, CHINA
TELEPHONE (86-10) 5828-6300

SUITES 3601 – 3606 & 3610
36/F, GLOUCESTER TOWER
THE LANDMARK
15 QUEEN'S ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, UNITED KINGDOM
TELEPHONE (44 20) 7367 1600

535 MISSION STREET, 24TH FLOOR
SAN FRANCISCO, CA 94105
TELEPHONE (628) 432-5100

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST, SUITE 3100
P.O. BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

MATTHEW W. ABBOTT
EDWARD T. ACKERMAN
JACOB A. ADLERSTEIN
ALLAN J. ARFFA
JONATHAN H. ASHTOR
ROBERT A. ATKINS
SCOTT A. BARSHAY
PAUL M. BASTA
LYNN B. BAYARD
JOSEPH J. BIAL
BRUCE BIRENBOIM
H. CHRISTOPHER BOEHNING
BRIAN BOLIN
ANGELO BONVINO
ANDRE G. BOUGHARD*
PAUL D. BRACHMAN
GERALD BRANT
ROBERT A. BRITTON
WALTER F. BROWN
SUSANNA M. BUERGEL
JESSICA S. CAREY
JOHN P. CARLIN
DAVID CARMONA
GEOFFREY R. CHEPIGA
ELLEN N. CHING
WILLIAM A. CLAREMAN
LEWIS R. CLAYTON
YAHONNES CLEARY
REBECCA S. COCCARO
JAY COHEN
KELLEY A. CORNISH
CHRISTOPHER J. CUMMINGS
TIHITINA DAGNEW
THOMAS V. DE LA BASTIDE III
MEREDITH R. DEARBORN*
KAREN L. DUNN
ALICE BELISLE EATON
ANDREW J. EHRLICH
GREGORY A. EZRING
ROSS A. FIELDSTON
ANDREW C. FINCH
BRAD J. FINKELSTEIN
BRIAN P. FINNEGAN
ROBERTO FINZI
PETER E. FISCH
HARRIS FISCHMAN
KATHERINE B. FORREST
VICTORIA S. FORRESTER
HARRIS B. FREIDUS
MANUEL S. FREY
KENNETH A. GALLO
MICHAEL E. GERTZMAN
ADAM M. GIVERTZ
SALVATORE GOGLIORMELLA
NEIL GOLDMAN
MATTHEW B. GOLDSTEIN
ROBERTO J. GONZALEZ*
CHARLES H. GOOGE, JR.
ANDREW G. GORDON
BRIAN S. GRIEVE
UDI GROFMAN
MELINDA HAAG*
ALAN S. HALPERIN
CLAUDIA HAMMERMAN
IAN M. HAZLETT
BRIAN S. HERMANN
JOSHUA HILL JR.
MICHELE HIRSHMAN
JARRETT R. HOFFMAN
ROBERT HOLO
CHRISTOPHER HOPKINS
DAVID S. HUNTINGTON
AMRAN HUSSEIN
LORETTA A. IPPOLITO
WILLIAM A. ISAACSON*
JAREN JANGHORBANI
BRIAN M. JANSON
LUKE JENNINGS
JEH C. JOHNSON
MATTHEW B. JORDAN
CHRISTODOULOS KAOUTZANIS
BRAD S. KARP
PATRICK N. KARSNITZ
JOHN C. KENNEDY
ROBERT A. KILLIP
BRIAN KIM
KYLE J. KIMPLER
JEFFREY L. KOCHIAN
ALEXIA D. KORBERG
DANIEL J. KRAMER
ANDREW D. KRAUSE

BRIAN KRAUSE
CAITH KUSHNER
DAVID K. LAKHDHIR
GREGORY F. LAUFER
BRIAN C. LAVIN
XIAOYU GREG LIU
RANDY LISKEY*
LORETTA E. LYNCH
JEFFREY D. MARELL
MARCO V. MASOTTI
DAVID W. MAYO
ELIZABETH R. MCCOLM
JEAN M. MCLOUGHLIN
ALVARO MEMBRILLERA
MARK F. MENDELSON
CLAUDINE MEREDITH-GOUJON
WILLIAM B. MICHAEL
SEAN A. MITCHELL
ERIN J. MORGAN
JUDIE NG SHORTELL*
CATHERINE NYARADY
JANE B. O'BRIEN
BRAD R. OKUN
SUNG PAK
CRYSTAL L. PARKER
LINDSAY B. PARKS
ANDREW M. PARLEN
DANIELLE C. PENHALL
CHARLES J. PESANT
ANASTASIA V. PETERSON
JESSICA E. PHILLIPS*
AUSTIN S. POLLET*
VALERIE E. RADWANER
JEFFREY J. RECHER
LORIN L. REISNER
JEANNIE S. RHEE*
ANDREW N. ROSENBERG
JACQUELINE P. RUBIN
RAFAEL M. RUSSO
ELIZABETH M. SACKSTEDER
JEFFREY B. SAMUELS
PAUL L. SANDLER
AARON J. SCHLAPHOFF
KENNETH M. SCHNEIDER
ROBERT B. SCHUMER
JOHN M. SCOTT
BRIAN SCRIVANI
KYLE T. SEIFRIED
KANNON K. SHANMUGAM
SCOTT A. SHER*
SUHAN SHIM
CULLEN L. SINCLAIR
MAURY SLEVIN
KYLE SMITH
AUDRA J. SOLOWAY
SCOTT M. SONTAG
JOSHUA H. SOVEN*
MEGAN SPELMAN
ROBERT V. SPERLING
EYITAYO ST. MATTHEW-DANIEL
SARAH STASNY
AIDAN SYNNOTT
ROBERT D. TANANBAUM
BRETTE TANNENBAUM
RICHARD C. TARLOWE
DAVID TARR
MONICA K. THURMOND
DANIEL J. TOAL
LAURA C. TURANO
CONRAD VAN LOGGERENBERG
KRISHNA VEERARAGHAVAN
JEREMY M. VEIT
LIZA M. VELAZQUEZ
MICHAEL VOGEL
ANDREA WAHLQUIST BROWN
JOHN WEBER
THEODORE V. WELLS, JR.
SAMUEL J. WELT
LINDSEY L. WIERSMA
STEVEN J. WILLIAMS
LAWRENCE I. WITDORCHIC
MARK B. WLAZLO
ADAM WOLLSTEIN
STACI YABLON
BOSCO YIU*
KAYE N. YOSHINO
TONG YU
TAURIE M. ZEITZER
KENNETH S. ZIMAN
T. ROBERT ZOCHOWSKI, JR.

WRITER'S DIRECT DIAL NUMBER

(212) 373-3118

WRITER'S DIRECT FACSIMILE

(212) 492-0118

WRITER'S DIRECT E-MAIL ADDRESS

lelynch@paulweiss.com

August 10, 2023

VIA ECF

Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

*Re: Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.,
No. 19-cv-00660 (E.D.N.Y.)*

Dear Judge Brodie:

I write to update the Court on the parties' ongoing efforts to address issues raised in this litigation through mediation.

*NOT ADMITTED TO THE NEW YORK BAR

I. Background

I have continued to receive call and videoconference data from the parties. I also continue to be in communication with the Federal Defenders, Inc. (“Plaintiff”) and their counsel, the government, and representatives of the Metropolitan Detention Center (“MDC”) and Metropolitan Correctional Center (“MCC”).¹

My communications with the Federal Defenders and the government focused on the following topics:

1. The current status of in-person legal visitation at the MDC.
2. The execution of the current protocol for scheduling and placing attorney-client phone calls at the MDC.

II. Telephonic Contact

The parties continue to schedule and facilitate legal phone calls under the Court Protocol for Attorney Calls and Teleconference Hearings. Pursuant to the Protocol, attorney-client calls are scheduled by Federal Defenders for afternoon slots of one-half hour each from 12pm to 3pm at the MDC. As Your Honor is aware, the parties have also made efforts to expand legal call hours beyond the times provided in the Protocol. *See* ECF Nos. 70 & 76.

According to information received from the parties, MDC scheduled 562 calls between July 6 and August 9, 2023. Of these 562 calls, 487 were completed,² 15 were attempted but not completed, 10 were cancelled or rescheduled by the inmate’s attorney,³ 11 were not completed because the inmate refused, five were not completed because the inmate was in SHU,⁴ four were not completed because the inmate was on a different floor,⁵ one was not completed because the inmate was in GED testing,⁶ two were not completed because the institution reported issues with the phone line,⁷ two were not completed because the inmate had a visit,⁸ two were not completed because the inmate was not at the institution, one was not completed because the inmate was in court, and one was not completed because the inmate was on suicide watch.⁹ Finally, seven calls were not

¹ I held joint mediation calls with the parties on July 18, July 31, and August 8, 2023.

² The Federal Defenders reported three of these calls as not completed.

³ The Federal Defenders reported one of these calls as completed.

⁴ The MDC reported that two of these calls were later completed.

⁵ The Federal Defenders reported two of these calls as completed. The MDC reported that two of these calls were later completed.

⁶ The MDC reported that this call was later completed.

⁷ The MDC reported that one of these calls was later completed.

⁸ The MDC reported that one of these calls was later completed.

⁹ The MDC reported that this call was later completed.

completed for unknown reasons,¹⁰ and we are unaware of the outcome for 14 calls. We are working with the parties to gather more information about these calls.

Additionally, Federal Defenders report some technical issues over the past five weeks.

III. Videoconferencing

According to the information received from the parties, MDC scheduled 187 videoconferences between July 6 and August 9, 2023. Of these 187 VTCs, 158 were completed,¹¹ three were completed as a call,¹² seven were cancelled or rescheduled by the inmate's attorney,¹³ six were attempted but not completed, three were not completed because the inmate was on a different floor, two were not completed because the inmate had a social visit, one was not completed because the inmate refused,¹⁴ one was not completed because the inmate was in religious services, and one was not completed because the inmate was in SHU. Finally, two VTCs were not completed for unknown reasons,¹⁵ and we are unaware of the outcome for four VTCs. We are working with the parties to gather more information about these VTCs.

Again, Federal Defenders report some technical issues with VTCs over the past five weeks.

IV. In-Person Visiting

Over the past five weeks, the parties have continued to discuss the tracking of attorney wait times. The MDC continued to collect data during this time period, and that data is available for tabulation should specific time-tracking concerns arise. The parties continue to discuss ways to efficiently collect the data and increase participation by the Defense Bar in the tracking system while minimizing the burden on the MDC.

The parties continue to discuss issues relating to implementation of procedures regarding legal access. Multiple incidents occurred throughout July and August 2023, where visiting room officers only called down one client despite customarily bringing down multiple clients for legal visitors. On August 1, 2023, the institution explained that it had posted signs reminding staff and visitors of this policy. On August 8, 2023, the institution modified this practice by explaining that attorneys may continue requesting up to three clients to be escorted to the visiting room, but that the institution may be limited in producing only one client at a time due to ongoing staffing and security challenges. The parties also discussed a recent incident from July 25, 2023, where a legal visitor's entry to the institution was delayed due to allegedly inappropriate clothing—

¹⁰ The MDC reported that two of these calls were later completed.

¹¹ The Federal Defenders reported four of these VTCs as not completed.

¹² The parties reported that these VTCs were switched to a call because of technical issues.

¹³ The Federal Defenders reported two of these VTCs as completed.

¹⁴ The Federal Defenders reported one of these VTCs as completed.

¹⁵ The Federal Defenders reported one of these VTCs as completed.

despite the visitor's seeming adherence to the dress code policy. The institution has since provided staff ongoing sensitivity training, which includes addressing potential dress code concerns in an objective and tactful manner. The front desk staff was also instructed to raise potential dress code concerns or judgment calls to MDC legal staff as they occur. Moreover, the institution continues to remind staff of these and all other policies with written guidance, which are intermittently updated as concerns arise.

We continue to work on managing the attorney experience within the institution. As previously reported, the MDC has installed phones on Unit 84, so attorneys can alert officers to the conclusion of their visit. The system has been utilized and is reported to work well. The MDC has indicated that it will be installing an intercom system in the SHU for the same reason. An event this week underscored the urgency of this issue, as we learned today of an attorney who was left in the SHU visiting room for over 30 minutes, despite repeatedly calling out and banging on the door. The MDC is awaiting delivery of the intercom system and is looking into this incident. I will continue to monitor this situation.

Ongoing technical issues with telephones and VTC equipment in various units are being investigated by staff and addressed as necessary. On July 18, 2023, the parties discussed a malfunction of the Unit 84 phone, and the institution reported that the phone was since repaired and operational on July 24, 2023. Additionally, the parties discussed technical issues with phones throughout the institution in late July 2023. On July 31, 2023, the institution explained that these issues were caused by ongoing work to the phone system, which was now resolved.

I will continue to discuss these and other issues with the parties.

Respectfully,

/s/ Loretta E. Lynch
Loretta E. Lynch

cc: Sean Hecker, Kaplan, Hecker & Fink LLP
Seth D. Eichenholtz, U.S. Attorney's Office (E.D.N.Y.)
Sean P. Greene-Delgado, U.S. Attorney's Office (E.D.N.Y.)
Shana C. Priore, U.S. Attorney's Office (E.D.N.Y.)
Jeffrey Oestericher, U.S. Attorney's Office (S.D.N.Y.)